

Date of Hearing: February 17, 2009

Committee: House Judiciary

Department: Education

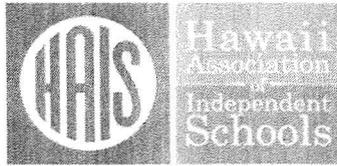
Person Testifying: Patricia Hamamoto, Superintendent

Title: H.B. 87, H.D.1 (HSCR 19), Relating to Education

Purpose: Authorizes and obligates the Department of Education to oversee and monitor students eligible for special education who are placed in private schools or facilities at public expense.

Department's Position: The Department of Education (Department) supports H.B. 87, H.D.1 (HSCR 19). Pursuant to Individuals with Disabilities Education Improvement Act of 2004 (IDEA), the Department is required to provide a free appropriate public education (FAPE) to all students with disabilities, including students placed in a private school or facility at public expense. To fulfill this federal mandate, the Department must monitor every student's progress to ensure the delivery of FAPE. In the past, the Department has been denied timely access to monitor these students and their educational records because they are not educated on a public school campus. This bill will allow the Department to fulfill their obligation under IDEA to provide FAPE to all students with disabilities, including those in a private school or facility at public expense.

The Department supports H.B. 87, H.D.1 (HSCR 19).



February 17, 2009  
2:00 p.m.  
Conference Room 325

TESTIMONY TO  
THE HOUSE COMMITTEE ON JUDICIARY

RE: HB 87 HD1 – Relating to Education

Dear Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

My name is Robert Witt, and I am executive director of the Hawaii Association of Independent Schools (HAIS), which represents 97 private and independent schools statewide that educate over 30,000 elementary and secondary students with a wide range of abilities and learning styles.

The Association supports the intent of House Bill 87, House Draft 1 – Relating to Education, which authorizes and obligates the Department of Education (DOE) to oversee and monitor the education of students eligible for special education services who are placed in private schools or facilities at public expense. We acknowledge the DOE's obligation to ensure that these students receive a free appropriate public education (FAPE) and also understand the Department's need for accountability and, in some cases, supervision and monitoring of these students and their educational records.

With respect to this matter, while HAIS respects the Department's concerns, we submit for consideration our view of the varied landscape of private educational institutions in our state. There are a number of non-public entities in Hawaii who provide students from DOE schools with special education services, and we recognize that some of these institutions lack affiliation with other non-public schools and professional associations, as well as requisite accreditation by a recognized body; however, those who are members of our association and are accredited by HAIS and/or the Western Association of Schools and Colleges have means and mechanisms in place to ensure that they provide each of their students with a high-quality education.

We strongly urge the members of the Committee to distinguish between these schools and those without such assurances and supports, to which the oversight measures outlined by this bill are more directly applicable. One strategy for achieving this

objective would be to exempt from the scope of this legislation the fully accredited members of HAIS that are pre-kindergarten through twelfth grade institutions with academic missions and purposes. The full members of the Association possess the values, standards and protocols necessary to deliver an excellent education to all of their students, and these same schools also have a history of positively and effectively collaborating with one another and with educators at the Department to meet the requirements of FAPE for those DOE students being educated on their campuses.

Mahalo for the opportunity to testify on this important matter.

AUTISM SOCIETY OF HAWAII  
P.O. BOX 2559  
HONOLULU, HAWAII 96802  
808 228-0122

HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY

**HB 87, HD1**

**TESTIMONY IN OPPOSITION**

Tuesday, February 17, 2009

Conference Room #325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

My name is Naomi Grossman, and I am the president of the Autism Society of Hawaii. The Autism Society of Hawai'i is an affiliate chapter of the Autism Society of America. Its members are composed of families who deal with living with the effects of autism and the professionals and paraprofessionals who serve them.

The Autism Society of Hawai'i will provide leadership in the field of autism dedicated to supporting families who advocate on behalf of their children and are committed to reducing the consequences of autism through education, research and advocacy.

The Autism Society of Hawai'i appreciates the opportunity to comment on the proposed HB 87, HD 1. As parents and friends of children with autism and other related disorders, we know that our children have the potential and hunger to learn. Research shows that parents' involvement in their children's individualized educational program promote positive outcomes.

HB 87, HD1 within which proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. We believe HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the

Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the federal Individuals with Disabilities Education Act (IDEA), whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for the opportunity to testify on HB 87, HD1.

Sincerely,

*Signature on file*

Naomi Grossman

Autism Society of Hawai'i, president

## karamatsu3-Leanne

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**From:** N.D. [bookfanatic@hotmail.com]  
**Sent:** Monday, February 16, 2009 9:38 AM  
**To:** Rep. Ken Ito; Rep. Jon Karamatsu; JUDtestimony  
**Subject:** Testimony In Opposition to HB 87, HD1 (Committee on Judiciary; House of Representatives)

Dan Santos  
421 Olomana Street  
Kailua, HI 96734

HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY  
HB 87, HD1

TESTIMONY IN OPPOSITION

Tuesday, February 17, 2009

Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Dan Santos and I am the parent of a child on the autism spectrum.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education. HB 87, HD1 is unnecessary because Act 179 which was passed by the Hawaii State Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services. Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,  
Dan Santos

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February 16, 2008

Testimony to the  
Committee on Judiciary  
For Hearing on Tuesday, February 17, 2009  
2:00 p.m., Conference Room 325

**RE: HB87, HD1 RELATING TO EDUCATION**

Dear Chair Karamatsu and Members of the Committee:

HB87, HD1 aims to establish that the Department of Education ("DOE") has the authority and obligation for oversight and monitoring of a student eligible for special education who is placed in a private school or facility at public expense; clarifies what DOE oversight and monitoring shall include; provides the DOE the power to deem the private school or facility placement inappropriate for a student if the DOE is not allowed "routine and timely access to monitor the delivery of special education and related services" to that student; and states that the student's individualized education program ("IEP") team shall determine a new placement and will not have the ability to consider the private school or facility placement for which the DOE deemed inappropriate.

**I ask that you refrain from passing this bill.**

I understand the bill's intent to establish and clarify the DOE's authority and obligation for oversight and monitoring of a student eligible for special education who is placed at a private school under sponsorship by DOE; however, I believe it is unfair to grant the DOE the independent level of power to deem a private school or facility inappropriate, that in DOE's interpretation and perspective does not allow DOE "routine and timely access to monitor the delivery of special education and related services."

If it is the Committee's will to pass the bill, I then ask that the Committee consider revising language in the bill that grants the DOE the independent level of power to deem a private school or facility placement inappropriate by replacing it with language that provides for the taking into consideration of the private school or facility's policies on student observations, interviews and record examination. In addition, I believe the insertion of language to require a pre-determined schedule of observations, interviews and the examination of the student's educational records would be helpful and more equally fair to all the members of the IEP team and parties involved in the education of the student.

Respectfully submitted,



Tracy L. Kiyabu

## karamatsu3-Leanne

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**From:** charlotte [charlotteky@hawaii.rr.com]  
**Sent:** Monday, February 16, 2009 2:01 PM  
**To:** JUDtestimony

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1 relating to Special Education; Oversight and Monitoring. I am a parent of two children with special needs, both on the Autism Spectrum, and I am also a graduate student at the University of Hawaii at Manoa Master's of Social Work program. HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous. Secondly, the issue of oversight and monitoring of special education services for children with disabilities in private schools that are placed or referred by public agencies (such as the DOE) are already a part of the Individuals with Disabilities Education Improvement Act of 2004. The Federal Register (34 CFR Parts 300 and 301) already have procedures in place that spell out the DOE's responsibilities towards children with disabilities in private schools placed or referred by public agencies (34 CFR 300.145-147).

Also, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure not pass.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,

Charlotte H. Kamauoha

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